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Emery L. Tracy
P.O. Box 1518
Boulder, CO 80306-1518

EXAMINER

MADSEN, ROBERT A

ART UNIT PAPER NUMBER

1761

DATE MAILED: 09/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/930,893

Applicant(s)

TOPPS ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: _____

DETAILED ACTION

Indefinite Claim Language

1. Claim 17 recites "the second additive". There is insufficient antecedent basis for this limitation in the claim. For examination purposes, the second additive is understood to be as recited in claim 14.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 13-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Green et al. (US 5682726).
4. Regarding claims 1, 13-16 see Abstract, Figure 1, Column 3, lines 15-45, Column 4, lines 14-30, Column 5, lines 1-11.
5. Regarding claims 17 and 20, the second or additional additive recited in claims 17 and 20 are inert gases (Column 5, lines 1-11).
6. Regarding claims 18 and 19, since Green et al. meet the *structural* limitations of the claims: a first and second additive nozzles, and "a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all

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the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

7. Claims 1, 2, 13-16, 18, 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hautemont (US 4565052).

8. See Abstract, Figure 1 and 9, and Column 7, lines 9-26. With respect to claims 18 and 19, since Hautemont meets the *structural* limitations of the claims: a first and second additive nozzles, and "a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987)

9. Claims 13, 14, 16, 18, 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Mueller (US 3976196).

10. See Abstract, Column 3, line 67 to Column 4, line 23, Column 6, lines 1-41, and Figures 1-3. With respect to claims 18 and 19, since Mueller meets the *structural* limitations of the claims: a first and second additive nozzles, and "a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987)

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11. Claims 13,15,16,18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Mason (US 4372098).

12. See Figure 7, Column 3, lines 3-12, and Column 4, lines 16-36. With respect to claim 18, since Mason meets the *structural* limitations of the claims: a first and second additive nozzles, and "a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987)

13. Claims 13 and 15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gray (US 5514400).

14. See Column 2, line 58 to Column 3, line 30 and Column 4, lines 1-15.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ludwig (US 6113959) in view of Deneville et al. (US 4805524)

17. Regarding claim 9, Ludwig teaches a method for applying additive to a food product (i.e. a meat) on a rollstock machine by forming at least one cavity, applying a

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first additive, loading a food product, and applying a second additive. Ludwig only differs from claim 9 in that Ludwig teaches the rollstock machine forms foil based cavities and cover instead of the recited film based cavities and cover (Abstract, Column 2, line 10 to Column 3, line 26).

18. However, Deneville et al. is relied on as evidence of the conventionality of utilizing a film rollstock machine for filling meat and additives sealed with a non-forming film (Abstract, Figure 2, Column 1, lines 40-68, Column 5, line 45 to Column 6, line 2). Therefore it would have been obvious to modify Ludwig and include a film rollstock machine since Deneville et al. teach film rollstock is also suitable for packaging meat with additives (both for the tray and cover), and one would have been substituting one conventional packaging material for another for the same purpose.

19. Regarding claims 10 and 11, Ludwig further teaches one may *optionally* include the first and second additives (Column 1, line 64 to Column 2, line 10). Therefore, to exclude the first and second additives from any number of cavities and products would have been an obvious matter of choice, since Ludwig teaches including additives is optional.

20. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ludwig (US 6113959) in view of Deneville et al. (US 4805524), as applied to claims 9-11 above, further in view of Slater (US 6039211).

21. Ludwig is silent in teaching a pressurizing the additives. However, Slater who also teaches applying liquid to a row of cavities, teaches that by pressurizing the fill

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nozzles one can better control the dispensing liquids with high vapor pressures without prematurely leaking from the nozzles (Figure 7, Column 2, lines 55-60, Column 3, lines 29-40, Column 4, lines 15-20, and Column 7, lines 5-9).

22. Therefore, it would have been obvious to include a pressurized nozzle for Ludwig since a pressurized nozzle is preferred for liquids having high vapor pressures to prevent leaking and Ludwig teaches liquids (i.e. seasonings and flavors) comprising very volatile components, which might leak out of nozzle and lessen the overall flavor impact on the meat.

23. Claims 1,2,5, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ludwig (US 6113959) in view of Gray (US 5514400), Deneville et al. (US 4805524), Eggers (US 6145284).

24. Regarding claims 1,2,5,8, Ludwig teaches foil rollstock machine forming cavities with a plurality of first additive delivery devices to apply a first additive (i.e. seasoning) to a plurality of cavities (at item 31), and a plurality of second additive (i.e. seasoning) delivery devices to apply a second additive to food products (at item 34), as recited in claims 1,2,8, but is silent in teaching a film rollstock machine, nozzles for delivery devices, and that the devices are secured to the rollstock machine per se as recited in claim 1 (Abstract, Column 2, line 10 to Column 3, line 26). Ludwig is also silent in teaching hoses for delivering the additives to the delivery device as recited in claim 5.

25. Gray is relied on as evidence of the conventionality of utilizing a *nozzle* connected to a hose to provide an additive to a cavity prior to adding a meat (Column 2,

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line 58 to Column 3, line 30 and Column 4, lines 1-15). Therefore, it would have been obvious to modify Ludwig and utilize a hose hooked up to each nozzle, as recited in claims 1 and 5, since Gray teaches using a nozzle to supplied by a hose to provide an additive to a meat /food product package and one would have been substituting one type of delivery device for another for the same purpose.

26. Deneville et al. is relied on as evidence of the conventionality of utilizing a *film* rollstock machine for filling meat and additives sealed with a non-forming film (Abstract, Figure 2, Column 1, lines 40-68, Column 5, line 45 to Column 6, line 2). Therefore it would have been obvious to modify Ludwig and include a film rollstock machine since Deneville et al. teach film rollstock is also suitable for packaging meat with additives (both for the tray and cover), and one would have been substituting one conventional packaging material for another for the same purpose.

27. With respect to the filling nozzles being *secured* to the rollstock machine, Eggers is relied on as evidence of the conventionality of a rollstock machine comprising filling nozzles that are secured to the machine (Abstract, Column 1, lines 23-59). Therefore, it would have been obvious to secure the delivery devices of Ludwig to the rollstock machine since it was known to attach all of the forming/filling/sealing devices to a single operational unit and this would offer the convenience of an "all-in-one" type of device.

28. Claims 3,4,6,7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ludwig (US 6113959) in view of Gray (US 5514400), Deneville et al. (US 4805524),

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Eggers (US 6145284) as applied to claims 1,2,5, and 8 above, further in view of Slater (US 6039211).

29. Regarding claims 3 and 4, Ludwig is silent in teaching the nozzles are independently closable, and the first and second nozzles can dispense a variety of materials. Slater teaches a means for adding liquid to multiple rows of cavities wherein each nozzle in a row has (1) its own control valve so that individual nozzle dispense volumes can be controlled (i.e. and thus is capable of being independently closed) and (2) has its own liquid source so that adjacent nozzles can dispense different materials (Figure 7, Column 2, lines 48-55, Column 4, lines 15-20, Column 7, lines 25--42, and Column 8, lines 13-35). Therefore it would have been obvious to modify Ludwig and include the ability to close some of the nozzles in the first or second addition area since Slater teaches providing a valve for the nozzle helps control the quantity dispensed and Ludwig simultaneously treats a variety of sizes of meat, which may require a variety of volumes. It would have also been obvious to include separate flavors sources for each nozzle so that adjacent nozzles would provide different flavors since Slater teaches providing different liquid sources allows one to provide a variety of different liquids to a cavity and Ludwig teaches treating different pieces of meat with each nozzle.

30. Regarding claim 6 and 7, Ludwig is silent in teaching a collection area is between the hoses and nozzles where the additives are mixed and that a pressurized delivery is used.

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31. Deneville et al. are relied on as evidence of the conventionality of hoses leading to a collection area for mixing meat additives that are sprayed into the meat package (Column 5, lines 1-55).

32. Slater is relied on as evidence of the conventionality of using separate collection areas for a particular nozzle when adding liquid to multiple rows of cavities so that adjacent nozzles can dispense different materials (Figure 7, Column 2, lines 48-55, Column 4, lines 15-20, Column 7, lines 25-42, and Column 8, lines 13-35). Slater also teaches that by pressurizing the fill nozzles one can better control the dispensing liquids with high vapor pressures without prematurely leaking from the nozzles (Figure 7, Column 2, lines 55-60, Column 3, lines 29-40, Column 4, lines 15-20, and Column 7, lines 5-9).

33. Therefore, it would have been obvious to include both a first and second collection area prior to the first and second nozzle and a pressurized delivery canal for Ludwig since Deneville et al. teach blending various additives prior to the nozzle and Slater teaches having separate collection areas for each nozzle allows for the nozzle to receive a different formula. One would have been substituting one delivery device design for another for the same purpose: providing a variety of liquids to various nozzles. It would have been further obvious to include a pressurized delivery canal because Slater teaches a pressurized delivery canal is preferred for liquids having high vapor pressures to prevent leaking and Ludwig teaches liquids (i.e. seasonings and flavors) comprising very volatile components, which might leak out of nozzle.

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34. Claims 13-16,18,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ludwig (US 6113959) in view of Gray (US 5514400) and Deneville et al. (US 4805524).

35. Regarding claims 13-16, Ludwig teaches foil rollstock machine forming cavities with a plurality of first additive delivery devices to apply a first additive (i.e. seasoning) to a plurality of cavities (at item 31), and a plurality of second additive (i.e. seasoning) delivery devices to apply a second additive to food products(at item 34), as recited in claims 13 and 14. Ludwig is silent in teaching a film rollstock machine, nozzles for delivery devices as recited in claims 13-16(Abstract, Column 2, line 10 to Column 3, line 26).

36. Gray is relied on as evidence of the conventionality of utilizing a *nozzle* to provide an additive to a cavity prior to adding a meat (Column 2, line 58 to Column 3, line 30 and Column 4, lines1-15). Therefore, it would have been obvious to modify Ludwig and utilize a nozzle, as recited in claims 1 and 5, since Gray teaches using a nozzle to provide an additive to a meat /food product package and one would have been substituting one type of delivery device for another for the same purpose.

37. Deneville et al. is relied on as evidence of the conventionality of utilizing a *film* rollstock machine for filling meat and additives sealed with a non-forming film (Abstract, Figure 2, Column 1, lines 40-68,Column 5, line 45 to Column 6, line 2). Therefore it would have been obvious to modify Ludwig and include a film rollstock machine sine Deneville et al. teach film rollstock is also suitable for packaging meat with additives

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(both for the tray and cover), and one would have been substituting one conventional packaging material for another for the same purpose.


38. Regarding claims 18 and 19, modified Ludwig meets the *structural* limitations of the claims (i.e. first and second additive nozzles), and "a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

Conclusion

39. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

40. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

41. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.


MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

Robert Madsen
Examiner
Art Unit 1761

